

Andover Conservation Commission Meeting Minutes

February 21, 2012

Town of Andover
36 Bartlett Street
3rd Floor Conference Room A
7:45pm

Conservation Commission Members in Attendance:

Chairman Donald Cooper, Commissioner Fran Fink, Commissioner Floyd Greenwood, Commissioner Alix Driscoll, Commissioner Honea and Commissioner Kevin Porter. Staff members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

299 South Main Street

Present in Interest: Bill Held

Non-Compliance with Enforcement Orders

Applicant requested to come before the Commission relative to non-compliance with an Enforcement Order issued October 18, 2011. Ms. Cleary presented to the Commission. This site was the subject of an enforcement order. In August of 2011, the Commission received a complaint that fencing and other alterations were occurring in a BVW. Staff investigated by "field view" on Aug. 19, 2011, as property owner was not home. Field view indicated fence appeared to be in a BVW. Staff issued an EO dated August 30, 2011 (ratified by the Commission at their next scheduled meeting on September 6, 2011), requiring the property owner to cease and desist, remove the fence from the wetlands, and restore the wetlands.

On or about September 16, 2011, the property owner engaged the BSC Group to analyze the property in order to identify resource areas. The BSC Group (Jeffrey Malloy) provided a wetland delineation report dated October 3, 2011, using state and federal methodologies (hydrophytic vegetation, hydric soils and hydrology) accompanied by data sheets in support of the delineation (approved by the Commission on October 18, 2011). This report indicated that the town GIS maps were incorrect in depicting a forested wetland extending across the property (north-south direction) parallel to South Main Street. BSC identified two smaller BVW's at each end of the property that are associated with larger wetlands systems located north and south of the property. The on-site BVW's have hydrological connections via subsurface culverts under existing driveways on each end of the property.

A 2nd EO was issued by the Commission on October 18, 2011, accepting the BSC report and accompanying plan. The EO required that the homeowner remove the portion of the chain link fence that remained in the BVW, and place the fence no closer than 25 feet from the BVW. The EO also required that non-disturb bounds to be installed 25 feet from Flag #'s 2, 3, 6, 8, 10 & 12 within 45 days (on or about Dec. 2nd, 2011). On December 2nd, the property owner requested and was granted an extension of time. Staff has been in contact with the property owner. Staff checked the site on February 6, 2012. Non-disturb bounds were put in "at will" by property owner, but not in the required

locations specified by the EO. Fencing had not been relocated as directed. Staff notified property owner that site was not in compliance. Homeowner requested to come before the Commission.

Mr. Held (home owner) presented to the Commission a handmade overlay using the entitled, "Plan of Land" dated 9/19/11 by DGT Survey Group identifying where he placed the non-disturb bounds. Mr. Held stated that the fence has been completely removed from the BVW. He requested permission from the Commission to suspend chain-link fabric between two posts located outside of the BVW to maintain the original fence line. The suspended fence section would be about 60 feet long.

The Commission asked questions about the actual and proposed locations of the bounds and fence. Commissioner Greenwood was concerned that eventually the suspended fence section would fall down into the BVW. The fencing might block the passage of wildlife. Commissioner Fink asked why the fence could not be moved out of the BVW and 25-foot setback to meet regulatory standards. The Commission encouraged Mr. Held to come back with an RDA to seek approval for his proposal.

Commissioner Fink made a Motion to require the owner to comply with the 2nd Enforcement Order as issued, including removal and relocation of the fence and installation of the bounds on the 25-foot setback, with sufficient bounds to be placed along the 25 ft setback from the wetlands at the Direction of the Conservation Agent. The Motion was seconded by Commissioner Driscoll. Commissioners Driscoll, Fink, and voted in favor, and Chairman Cooper and Commissioner Honea opposed. The Motion passed. Commissioner Porter abstained.

Commissioner Driscoll made a 2nd Motion to approve the time frame of 1 month or as winter allows for Mr. Held to comply with the Enforcement Order; it was seconded by Commissioner Honea, and approved unanimously.

3 Barbara Lane

Present in Interest: Dana Adam, contractor, and Robert Fitzpatrick, owner

Public Meeting on the Request for Determination of Applicability to determine if the proposed installation of 100 ft. of 12 inch pipe in an existing drainage easement and the installation of riprap headwalls at both ends of the pipe with the drainage easement (swale) to be backfilled upon completion is subject to the Massachusetts Wetlands Protection Act, M.G.L.

Ms. Cleary recommended requiring a Notice of Intent with engineered site plans, drainage analysis, grading plan and other standard requirements, as well as a copy of the easement language permitting property owner to do proposed work. It is normally the Commission's policy to require an engineer with wetland experience or other similarly credentialed individual to design drainage alterations, rather than a landscaping company.

Ms. Cleary reminded the Commission that an RDA was filed last November 15, 2011, for the same project. At that time, the applicant's representative met on site with staff and the Town Engineer to view the existing drainage swale. It was determined that there were no utilities, and that the swale was located in a private drainage easement granted to an abutting neighbor at 3 David Drive, *not* to the Town. At this site meeting, staff recommended filing a Notice of Intent with drainage calculations, sizing of pipe, etc. prepared by an engineer. The Town Engineer also recommended obtaining legal

documents from property owner of 3 David Drive to do work in said easement prior to filing the Notice of Intent.

On November 22, 2011, Dana Adam requested a withdrawal of the previous RDA (DA2011-051) without prejudice and the Commission accepted the withdrawal on December 15, 2011.

Mr. Adam has now submitted the same RDA as before. Easement language has been drafted, and Mr. Adam provided a copy to the Commission for review during this meeting. The project filing is under the WPA only because the house was built in 1982. The drainage easement contains a grassy swale and does carry water. Mr. Adam was looking for guidance from the Commission.

The Commission noted that the maps and sketches submitted with the RDA do not show the wetlands boundaries, limits of proposed work, or proposed grading. It is impossible to determine if our regulation setbacks are met due to inadequate plan submittal. The RDA does not provide the necessary engineering analysis to determine whether the proposed filling will result in flooding or other damage. The Commission recommended that the applicant review the regulations and submit a Notice of Intent.

Commissioner Fink made a Motion to issue a positive Determination that the project is in an area subject to jurisdictions and will require the filing of a Notice of Intent. The Motion was seconded by Commissioner Driscoll and unanimously approved. Staff was to note on decision that the decision was based upon insufficient information provided to the commission.

600/800 Federal Street and 165/171 Chandler Road

Present in Interest: Susan Mohn – John Crowe Associates, Anthony Christopher, Alexis Alicea

Public Hearing on an Abbreviated Notice of Resource Area Delineation filed by Leggat McCall Properties LLC under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, § 40, and/or the Andover Wetlands Protection By-law, Article XIV, to determine the accuracy of wetland delineations.

Mr. Douglas described the existing office park with wetlands intertwined through the property. Currently no work is being proposed. Mr. Douglas has walked the line and the flags are consistent with WPA and Bylaw.

Susan Mohn from John G. Crowe Associates presented to Commission that the 800 site was developed in the year 2000 and the 600 site was developed in the year 1998. The office park subdivision was developed in the early 1980's under one Order of Conditions, including drainage swales and detention basins. The ANRAD plan shows the drainage structures as well as wetlands,

Commissioner Fink asked whether the wetland near Chandler Road is vernal pool. It is ponded at present. Mr. Douglas said it is not certified, but observations could be made this spring. Ms. Fink also asked about flagging in the eastern side of the site that was not shown on the site plan. Ms. Mohn said that part of the site could not be developed due to zoning setback requirements.

Mr. Douglas asked Ms. Mohn what work might be proposed on this site. She said the project may include an additional building and parking. An abutter, Mr. Anthony Christopher, expressed his concern about the trees and property close to his house. Sue Mohn stated that the parking lot limits on the east side would remain the same.

Mr. Douglas asked for a revised site plan to note the possible vernal pool and the Watershed Protection Overlay District boundary.

Commissioner Honea made a Motion to confirm the wetlands boundaries shown on the ANRAD site plan and issue the ORAD upon receipt of a revised site plan to include the WPOD divide and potential vernal pool on site; it was seconded by Commissioner Driscoll and unanimously approved.

ACTION ITEM:

Newport Circle

Order of Conditions, DEP 090-0801 and 90-1038, and Enforcement Orders

Vote to Approve Reforestation Plans

Agent Cleary presented revised reforestation plans to mitigate the previous cutting of trees beyond the established limits of work. The applicant has made a significant improvement over previous plans that were denied. There are increased plantings and species are indigenous to N.E., as required. However, many of the proposed species are wetland plants placed in upland areas, and there is no clear demarcation for the areas of reforestation. Although, there may be some areas that would benefit from better coverage, it is difficult to determine whether the planting plans will result in 75% coverage as required. Any problems could be remedied prior to issuance of a Certificate of Compliance.

Ms. Cleary recommended accepting the reforestation plans subject to the following provisions:

Receipt of revised plans depicting demarcation with tree line of reforestation areas. Two sets of plans are sufficient;

Proposed species may be changed to indigenous upland species;

Additional landscape boulders should be added to demark the reforestation areas on the subject lots; and

Achievement of 75% coverage in reforested areas prior to a Request for a Certificate of Compliance for the subdivision and affected lots. If adequate coverage is not observed at that time, additional plantings will be required and monitored until such coverage has been achieved.

Commissioner Greenwood made a Motion to approve the revised Reforestation Plans dated January 18, 2012 which include Sheet L-2 (Lot 2), Sheet L-3 (Lot 3) and Sheet L-4 (Lot 6), DEP File #090-0801 & 090-1038, subject to the provisions recommended by Ms. Cleary; it was seconded by Commissioner Driscoll and unanimously approved.

CONSENT AGENDA:

Minutes

Commissioner Porter made a Motion to approve the Minutes of January 11, 2012 and January 25, 2012, as drafted; it was seconded by Commissioner Driscoll and unanimously approved.

43 Farrwood Drive

Issuance of Certificate of Compliance Withdrawn Request

Ms. Cleary reported that the owner had withdrawn the request for a Certificate of Compliance because the Certificate issued in 1979 had been found before this meeting.

DISCUSSION ITEMS:

Girl Scout Troop 60374

The Troop Leader was not present to speak about the Special Permit Project to install bluebird nest boxes on Conservation lands. Mr. Robert Decelle asked if they could be added to the next agenda on March 6, 2012 to discuss the project.

Conservation Commission Overseer Meeting

Commissioner Porter reported to the Commission that the meeting has been set on May 8, 2012 and the notification has been sent to the overseers. Chairman Cooper said Chris Lahey from Mass. Audubon is an excellent speaker, and he will contact him to find out whether he can make a presentation. The Commission discussed how to advertise the event to the public, including articles in the Eagle Tribune and Andover Townsman. Part of the meeting could be used for business, and the rest for the speaker and to encourage new people to become overseers.

Trail Interns Summer 2012

Bob Decelle reported that he had discussed with current Intern Mike Campanelli about having a couple of Interns from UMASS Amherst's Environmental Program to work on the Shlakis property and the other two meadows this summer. Mr. Decelle will need to come up with the requirements for the project. It is estimated to be about 10 hours a week. The Environmental Program will be offered on a volunteer basis and it could possibly give the students college credit. The project should be coordinated with overseer Al Retelle.

Commissioner Greenwood made a Motion to approve the 2012 Summer Intern trail work; it was seconded by Commissioner Driscoll and unanimously approved.

30 & 40 Shattuck Road

Proposal for development of multi-family housing under MGL, Chapter 40 B

The Commission received a one-sheet site plan for the project. Mr. Douglas reported that the Zoning Board of Appeals would like comments from the Conservation Commission by 3:00 p. m. on February 27, 2012. The ORAD was appealed by an abutter, and DEP subsequently issued a Superseding Order (SORAD), which stated that the intermittent stream was considered a 'non-jurisdictional ditch' under the WPA and the detention basins were drainage structures, not wetlands. This decision has now been appealed by the abutter, and also the Bylaw decision in court. The main area of disagreement remaining is the "intermittent stream" alongside Shattuck Road and the stream's jurisdictional status.

The Commission reiterates their opinion that this feature is an important and protectable resource area under the Bylaw.

The Commission discussed the site plan and agreed to send the following comments to the ZBA:

- 1) The mandate for work near wetlands is to “*Avoid, Minimize and Mitigate*”. Which is to say, it is preferable to AVOID working in the wetlands and their buffer. However, if one must work in a wetland or buffer one should MINIMIZE that work. Lastly if such work is unavoidable, one should MITIGATE to ensure there is a positive environmental effect. Clearly, the proponents offer to move parking out of the 25-foot setback is a good means to AVOID the intermittent stream, and its no-disturb buffer. This is the best way to meet the Commission’s standards and protect the waterway.
- 2) The Commission is of the opinion that the snow storage area as depicted on the plan is unworkable. A preferable solution is to have the snow removed from the site and not stored.
- 3) The Commission has not received a Notice of Intent for the project and has not received the complete site plan set, engineer’s drainage report; soils test information, and other relevant materials. The Commission does not yet have sufficient information to determine whether the proposed stormwater management systems will meet the DEP and Town Stormwater Management Standards. If the wetlands delineation appeals result in a final determination that the stream channel is not a jurisdictional wetland, then the project may not be subject to Commission review. In that case, the ZBA would be advised to consult a Registered Professional Engineer for peer review of the stormwater management design. The design should include erosion controls during construction and long-term maintenance commitments, including reciprocal easement agreements for any shared drainage structures.

Commissioner Greenwood made a Motion to advise as discussed to ZBA before February 27, 2012; it was seconded by Commissioner Driscoll and unanimously approved

Rolling Green 0 & 303 Lowell Street

Present in Interest: Alexis Alicea, abutter

Proposal for development of multi-family housing under MGL, Chapter 40 B, and Appeal of ORAD, DEP File #090-1143

Mr. Douglas reported on the ZBA meeting on February 15, 2012, attended by most of the Commissioners. The ZBA’s consultant raised significant issues about compliance with the WPOD standards in the Zoning Bylaw, and issues concerning the proposed filling of the southern basin. The Zoning Board of Appeals would like comments from the Conservation Commission by 3:00 p. m. on February 27, 2012. DEP is still reviewing the appeal of the ORAD, and the Commission and developer have been submitting information and comments to DEP.

The Commission had not received complete site plans or drainage analysis for this meeting, as requested during the meeting on the 15th. The Commission did review an email dated February 21, 2012, from Bob Golledge, the developer’s wetlands consultant, to Mr. Douglas. Mr. Golledge

proposed that, without conceding jurisdiction, the developer would be willing to construct a wetland replication area to mitigate filling the southern irrigation basin.

The Commission thinks this basin is jurisdictional as Land Subject to Flooding under State and Town law, and as Isolated Vegetated Wetlands under the Bylaw. Mr. Douglas stated it is also probably jurisdictional under the Clean Water Act.

Resident Alexis Alicea at 285 Lowell Street encouraged the Commission to enforce the wetland regulations carefully on this site.

The Commission discussed draft comments to send to the ZBA, including the jurisdictional status of the southern basin, recommendations to avoid filling the southern basin, and to consider alternative designs that would better protect the wetlands and drinking water sources. The Commission would also note that complete site plans and drainage analysis should be provided for more detailed comments.

Commissioner Porter made a Motion to send comments as discussed to the ZBA before February 27, 2012; it was seconded by Commissioner Driscoll and unanimously approved.

The next meeting will be held at 7:45 p.m. on March 6, 2012.

The meeting was adjourned at 9:57 p.m. by Motion of Commissioner Greenwood. It was seconded by Commissioner Driscoll and unanimously approved.

Respectfully submitted by:
Wendy Adams
Recording Secretary